

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)	
)	
Streamlining Deployment of Small Cell)	
Infrastructure by Improving Wireless Facilities)	WT Docket No. 16-421
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

Comments of the Town of Leesburg, Virginia

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The Town of Leesburg (“Town”) submits these comments on the Public Notice re: Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC, Petition for a Declaratory Ruling (“Public Notice”) issued by the Federal Communications Commission (“FCC”) Wireless Telecommunications Bureau (“WTB”).

The Town is excited about the benefits and economic potential emerging wireless technology will bring, and has always been open and receptive to industry and community leaders. Further, pending legislation in the Virginia General Assembly addresses the issues and concerns raised by Mobilitie, LLC.

I. STATEMENT OF FACTS CONCERNING TOWN OF LEESBURG’S UPDATES TO ITS ZONING ORDINANCE AND TOWN PLAN TO INCORPORATE REGULATIONS SPECIFIC TO TELECOMMUNICATIONS FACILITIES

As early as 2003, the Town incorporated into its Zoning Ordinance regulations specific to telecommunications facilities, specifically antenna, monopoles and towers. Beginning in late 2015, Town staff met with telecommunications industry representatives¹ to discuss details of Small Cell and Distributed Antenna System (“DAS”) deployments in anticipation of the Leesburg Town Council’s (“Council”) initiation of zoning amendments to accommodate Small Cell and DAS facilities. These meetings and consultations continued throughout the Town’s Zoning Ordinance amendment process to ensure proposed amendments were technically sound.

On January 12, 2016, Council adopted a resolution² to initiate Zoning Ordinance amendments to establish Small Cell and DAS regulations. On April 26, 2016, Council also initiated a Leesburg Town Plan amendment³ to update the Town Plan policy on

¹ These representative included Ed Donohue, Esq., of Donohue & Stearns, PLC, Stephanie Petway of NB&C, and Ginger Beaudoin, MasTec Network Solutions, representing Verizon Wireless.

² Town of Leesburg Resolution No. 2016-009 initiating text amendments of the Zoning Ordinance in TLOA-2016-0001.

³ Town Plan Amendment TLTA-2016-0001.

telecommunications facilities by adding locational criteria and general performance standards for certain types of telecommunications facilities. The intent of this policy was to assist in streamlining the approval process for Small Cell and DAS applications by minimizing the need for commission permits issued by the Town's Planning Commission. This would be achieved by making Small Cell and/or DAS a feature shown on the Town Plan. Thus, no commission permit would be necessary.

Following this, in June 2016, public hearings were opened before the Town's Planning Commission⁴ to address the proposed amendments to the Town's Zoning Ordinance and Town Plan. Additionally, the Town's Technology and Communications Commission was given the opportunity to provide input to the Planning Commission. In September 2016, the Planning Commission recommended approval to Council of the Small Cell and DAS amendments to the Zoning Ordinance and Town Plan, with representatives from the telecommunications industry in attendance, including Kathryn Nix and Mark Holland of Mobilitie, LLC ("Mobilitie"). Shortly after Planning Commission approval, Council approved the Zoning Ordinance amendment and Town Plan Amendment on September 27, 2016.⁵

II. DETAILS OF THE TOWN'S AMENDED REGULATIONS

The amendment to the Town's Zoning Ordinance expanded the ability to deploy telecommunications systems throughout the Town, specifically Power Mount Facilities on existing electric transmission towers and Small Cell and/or DAS facilities. Power Mount Facilities were added to the following Town zoning districts as special exception uses: Single Family Residential Estate (R-E), Single Family Residential (R-1 and R-4), General Office (O-1),

⁴ See Va. Code § 15.2-2210 et seq.

⁵ Ordinance No. 2016-O-0022 was enacted, amending the Town's Zoning Ordinance; Resolution No. 2016-126 was adopted, amending the Town Plan.

Mixed-Use Business (B-4), and Planned Residential Community (PRC). The Town's Zoning Ordinance was amended to permit Small Cell and/or DAS facilities in all zoning districts by right subject to the minimum use standards established.⁶ Further, if any one of the use standards could not be adhered to, the option would be available for special exception review to approve a particular deployment or individual node location.

The established use standards address the following specific elements of a DAS and/or Small Cell deployment: camouflage; maximum size and height for roof-mounted facilities; maximum number of antenna; maximum extension above a roof or parapet; maximum replacement pole diameter; ground-mounted equipment location, size, and camouflage; maximum roof area of co-located facilities; lighting prohibition; advertising prohibition; historic overlay district review; and removal of abandoned equipment. In short, as the amended regulations pertain to deployments within public rights-of-way, DAS and/or Small Cell deployments are permissible in the rights-of-way of local collector or higher classification roadways on existing utility poles, or on replacement of existing utility poles. Every effort is to be made to utilize stealth/camouflage techniques for the antenna and any associated ground-mounted equipment.

Contrary to the Comments of Competitive Carriers Association ("CCA"), the Town was in the process of amending its Zoning Ordinance and Town Plan to incorporate Small Cell and DAS facilities, at the time of CCA's submission to the FCC. At the time of this filing, the Town has not received any applications for Small Cell deployments.⁷ In fact, the Town had a recent discussion with representatives from Verizon Wireless and informed those representatives of

⁶ See Zoning Ordinance Sec. 9.2 – Use Table; 9.3.26.F – Distributed Antenna Systems (DAS) and/or Small Cells. Town of Leesburg Zoning Ordinance can be found here:

<http://www.leesburgva.gov/government/departments/planning-zoning/zoning/zoning-ordinance>

⁷ New legislation is in the hands of Virginia's Governor concerning Small Cell facilities. The Town will, once again, amend its Zoning Ordinance to comport with any new legislation expected to be enacted.

pending state-level legislation to their benefit. The Town suspects those representatives chose to delay filing their application with the Town until new legislation is passed.

III. PENDING VIRGINIA LEGISLATION

In the hands of Virginia's Governor is Senate Bill 1282⁸, which would set out limitations in which a Virginia locality shall approve or disapprove a zoning application for a wireless facility; require a written explanation supported by substantial record evidence publicly released contemporaneously with any denial; and prohibit a moratorium on considering zoning applications submitted by wireless service providers or wireless infrastructure providers (monopoles). Fortunately, because of the Town's earlier efforts to simplify Small Cell and DAS deployment in consultation with representatives in the industry, the Town's Zoning Ordinance will remain largely unaffected. Finally, it limits the fees a locality may collect from the zoning application. The pending legislation, expected to be signed off by the Governor shortly, renders Mobilitie's Petition for a Declaratory Rule moot as it pertains to Virginia localities.

IV. MOBILITIE'S APPLICATION TO THE TOWN

With regard to Mobilitie's Petition for Declaratory Ruling, it is important to note that Mobilitie never reached the stage where the Town required a permit fee because Mobilitie never complied with the Town's Zoning Ordinance. Mobilitie tracked the Town's progress of the Zoning Ordinance amendment in 2016. On August 31, 2016, the Town's Zoning Administrator, Christopher Murphy ("Murphy") contacted Kathryn Nix⁹ via e-mail to confirm the Planning Commission's meeting date and time. Ms. Nix and Mark Holland¹⁰ attended that meeting on September 1, 2016. Murphy also confirmed the date and time of the September 9th Council

⁸ <http://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+SB1282>

⁹ Ms. Nix identified herself as the NRE Specialist, Network Real Estate with Mobilitie.

¹⁰ Mr. Holland identified himself as the Permitting Manager, Network Real Estate with Mobilitie.

meeting that included the Zoning Ordinance amendment. On October 6, 2016, Ms. Nix notified Murphy of her desire to schedule a pre-application meeting for a special exception application. Ms. Nix sent an e-mail to Murphy the following day indicating that Mobilitie's co-location met the criteria for by-right review under the Zoning Ordinance and inquired whether a building permit or right-of-way permit application was necessary. Murphy provided Ms. Nix with the correct information and included additional information that would be required from Mobilitie, including acknowledgment from the owner of the building, structure or pole that Mobilitie is authorized to install its equipment on the particular location(s) specified in its application. Murphy informed Ms. Nix that Mobilitie's application would be the first of its kind under the new Zoning Ordinance and additional information may be required as the application was processed.

On October 13, 2016, Mobilitie representatives met with Town staff for a special exception pre-application meeting relating to new pole locations in the Town's right of way. Mobilitie's application involved seven (7) sites with steel and wooden poles ranging from 72 feet to 120 feet. The Zoning Ordinance is clear in that an applicant can install Small Cell or DAS facilities in the right of way on an *existing* pole, or an applicant can *replace* an *existing* pole up to a maximum height of 64 feet.¹¹ Mobilitie's application proposed building new poles for the sole purpose of supporting telecommunications infrastructure, which placed it under the regulations of Section 9.3.26.C. Therefore, the poles needed to be placed on private property; not in Town right of way.

Ms. Nix and Murphy continued to communicate, which included Murphy's comments and questions on November 4, 2016, concerning whether Mobilitie's backhaul data transport

¹¹ Section 9.3.26.F of the Leesburg Zoning Ordinance: <http://www.leesburgva.gov/home/showdocument?id=4541>

equipment qualified as a Small Cell or DAS under the Sections 18.1.43.1 and/or 18.1.174.1 of the Zoning Ordinance. Murphy asked Mobilitie to clarify whether their application was speculative or one intended to address an actual network coverage issue considering Mobilitie's assertions that the proposed equipment was not dedicated to any particular customer. Additionally, Murphy requested proof of authorization by Dominion Virginia Power ("DVP") that Mobilitie could install its equipment on DVP's utility pole.¹² Mobilitie responded by sending only a title page and signature page of the agreement that contained no evidence that Mobilitie was authorized to use DVP's utility pole.

As Murphy continued to review Mobilitie's application, he, once again, questioned how Mobilitie's proposed backhaul data transport equipment installation qualified as a Small Cell deployment, as defined in the Zoning Ordinance. Murphy continued to press Ms. Nix for confirmation whether or not Mobilitie's application was for a Small Cell or DAS, permitted under the Zoning Ordinance. Additionally, Murphy asked, again, for evidence that DVP authorized Mobilitie to utilize the specific utility poles included in its applications.¹³ On November 16, 2016, Ms. Nix explained Mobilitie's position as to how the equipment proposed to be deployed in the submitted applications qualified as a Small Cell deployment. She confirmed that the proposed installation would be owned by Mobilitie and was not intended to serve a particular wireless carrier; rather it was going to be built in place to serve any future needs of a wireless telecommunications carrier, cable or internet provider. Ms. Nix admitted that, in previous communications with Murphy, she failed to reveal that Mobilitie was working with a

¹² Without this evidence, the Town cannot accept applications for review.

¹³ Murphy stressed that the Town was not requesting any proprietary information in any agreement between Mobilitie and DVP.

wireless carrier because of an existing non-disclosure agreement. But, she was able to confirm that Mobilitie was working with Sprint on a Small Cell deployment in the Town.

Murphy reiterated that the backhaul transport equipment was an element of a Small Cell or DAS deployment, but was not, in itself, a Small Cell or DAS. Murphy also notified Ms. Nix that the Town had not received any application from Sprint for the Small Cell deployment alluded to in Nix's November 16th communication. Murphy requested contact information for someone at Sprint involved in the Leesburg Small Cell deployment, so he could understand what Sprint was planning, how Mobilitie was involved and when the full application for the deployment could be expected.

On December 14, 2016, Murphy met with representatives from Mobilitie, along with Town representatives.¹⁴ At that meeting, Murphy reiterated his determination that the backhaul transport equipment was merely an *element* of a Small Cell deployment. As such, the backhaul equipment could not be approved on its own, but must to be submitted as part of a complete Small Cell deployment application. In response to this, on January 9, 2017, Ms. Nix produced a letter purported to be from the Northeast Network Vice President for Sprint.¹⁵ However, the letter was written on Mobilitie corporate letterhead. Ms. Nix also indicated her desire to resubmit its monopole sites to the Town. Murphy spent much time explaining to Ms. Nix that Mobilitie's application did not meet the Zoning Ordinance requirements for Small Cell and/or DAS deployments, and that Mobilitie was required to submit a complete application that included the entire deployment, including Sprint's Small Cell deployment.

¹⁴ Mayor Kelly Burk, Town Manager Kaj Dentler, Town Attorney Barbara Notar and Director of Planning and Zoning, Susan Berry-Hill.

¹⁵ On February 7, 2017, Ms. Nix provided to Murphy Sprint letterhead. Murphy did speak with the Sprint representative and instructed him to include Mobilitie's backhaul equipment as part of Sprint's intended Small Cell application in the Town.

Murphy met with Mobilitie's Mark Holland several times to discuss how the Zoning Ordinance operated and why Mobilitie's applications did not meet those requirements. Mr. Holland informed Murphy of Mobilitie's intent to put its plans together with an application from Sprint for a Small Cell deployment. To date, no such application has been submitted, and the Town has not received confirmation from DVP that it authorizes Mobilitie to install equipment on its utility poles specified in Mobilitie's applications.

V. CONCLUSION

In conclusion, the Town of Leesburg, Virginia has long recognized the importance of new emerging telecommunications technology and took the appropriate legislative steps to amend its Zoning Ordinance and Town Plan, after industry representatives made this request. To say the Town has been “in the process of revising [its] zoning ordinance to facilitate Small Cell deployment for over two years,” is a baseless accusation. See Competitive Carriers Association Comment, filed March 8, 2016, page 21. Additionally, CCA's accusation that the Town is not receptive to telecommunications providers is unfounded when: (1) the Town amended its regulations to accommodate industry requests; (2) the Town informed Verizon Wireless representatives of pending legislation to their benefit; and (3) no applications have been filed with the Town after the industry-friendly Zoning Ordinance amendments were enacted. With regard to Mobilitie, the Town's experience with Mobilitie has been frustrating, at best, in light of Mobilitie's inability to submit an application that complied with the Town's updated Zoning Ordinance. Any delay in that process was solely due to Mobilitie's lack of or refusal to understand the Town's regulations and inability or refusal to provide the appropriate information with its application.

The Town of Leesburg appreciates the opportunity to provide the FCC with relevant information concerning matters raised in the Public Notice. The Town sees no need for the FCC to take any action.

Dated: April 6, 2017

/s/ Barbara Notar
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Town Attorney